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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,552	04/22/2004	Allen Stein	2A08.1-012	6370
23506 7590 04/16/2007 GARDNER GROFF SANTOS & GREENWALD, P.C. 2018 POWERS FERRY ROAD SUITE 800 ATLANTA, GA 30339			EXAMINER NEWTON, JARED W	
			ART UNIT	PAPER NUMBER
			3692	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/829,552	STEIN, ALLEN	
	Examiner	Art Unit	
	Jared W. Newton	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8 and 10-20 is/are rejected.
- 7) ☒ Claim(s) 3,4,9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's Appeal Brief was received on December 14, 2006. Upon consideration by the Examiner, his Supervisor, and an Appeals Specialist, of the Grounds of Rejection and Arguments therein, the rejections set forth in the Final rejection mailed May 30, 2006 are hereby withdrawn, as claims 1-4 and 10 are deemed not anticipated by No. Des. 249,000 to Simmons (hereafter Simmons), and claims 5-9 are not unpatentable over Simmons. **This action is therefore non-final.**

### ***Claim Objections***

Claim 16 is objected to because of the following informalities: It is unclear whether the "free edges" of the underlying display panels, or the "material samples [mounted] thereon" are to extend beyond free edges of overlying display panels. Appropriate correction is required.

For purposes of examination, the language has been interpreted to mean:  
--underlying display panels of each of the first and second arrays have free edges with material samples thereon, said samples extending beyond free edges of overlying display panels.--

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3692

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,000,561 to Schumacher.

In regard to claim 1, Schumacher discloses a merchandise display comprising a rack having fixed body panel 20 (see FIG. 3); a plurality of display panels 26 detachably mounted to said rack, at least one of said plurality of panels being a hinged panel pivotally movable between a first position overlying a portion of another of said plurality of panels, and a second position not overlying the other panel (see FIG. 2B), each of said panels comprising a free edge distal said rack, wherein the free edge of each of the plurality of panels extends beyond the free edges of any overlying panels when the panels are in the first position (see FIG. 3); and each of said plurality of display panels having a material sample 62 mounted thereon, each said material sample extending to the free edge of the panel it is mounted on (see FIG. 3).

In regard to claim 2, Schumacher discloses each of the panels mounted to the rack in a position horizontally offset from an adjacent one of said panels (see FIG. 2B).

In regard to claims 6-8, Schumacher discloses said sample 62 comprising roofing or flooring materials. It is inherent that flooring materials include carpet, tile, etc., and that said materials are further capable of covering a wall.

In regard to claim 10, Schumacher further discloses a first plurality of samples mounted to the right hand side of the rack, and a second plurality mounted to the left hand side of the rack (see FIG. 3).

Art Unit: 3692

Claims 11, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons.

In regard to claim 11, Simmons shows a rack having a base (portion of rack that contacts the ground), a body panel (central rear panel from which four panels extend), and a storyboard extending laterally from said body panel (unitary rearmost panels extending from the left and right sides of the body panel) (see FIG. 1); and

an array of display panels mounted to said rack and overlying a portion of the storyboard such that said storyboard is only partially visible behind the array to an observer positioned in front of the display device (for instance, to an observer viewing the rack straight-on in Figure 1).

In regard to claims 14 and 15, Simmons further shows a first storyboard extending from the left hand side of the rack (when viewed straight-on in Figure 1), and a second storyboard extending from the right hand side of the rack, the left and right storyboards respectively only partially visible behind a left and right array of panels (see FIG. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schumacher as applied to claim 1, alone.

In regard to claim 5, Schumacher shows material samples mounted to different panels (see FIG. 1). The Examiner takes Official Notice that larger portions of a given sample of material cost more than smaller portions thereof. Material is generally sold by geometric area, (i.e. dollars per square-foot). This is well established and common in the art of materials including carpet, wood, wallpaper, fabric, tile, etc. It follows then that the more of a material constituting a sample, the more the cost, and vice versa. Thus, the higher the price is of a material sample shown by Schumacher, the larger that sample will be.

Claims 12, 13, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons as applied to claims 11, 14, and 15, in view of US Patent No. 3,391,796 to Cross.

In regard to claims 12 and 13, Simmons discloses the limitations of claim 11, and further discloses each of said panels comprising a material sample (darker, shaded, parallelepiped portions) mounted thereto, the material sample extending substantially to the free edge of the panel (see FIG. 1).

In regard to claim 16, when the rack of Simmons is viewed straight-on in Figure 1, the two panels left of center are the first array, the two panels right of center are the second array, the rearmost left and right panels (unitary with the body portion) are the storyboard portions, the innermost panels are the overlying panels, and the panel between the innermost panel and the storyboard portion for each of the first and second

Art Unit: 3692

sides of the rack is the underlying panel. Under this interpretation, the underlying panels as shown have material samples (shaded regions) mounted thereon, the edges of said samples extending laterally beyond the outermost edges of the overlying panels as shown; and, the storyboard portions of the rack are partially (i.e. not fully) visible behind each of the first and second arrays of display panels (see FIG. 1).

In regard to claim 19, Simmons further discloses each of said panels as horizontally offset from an adjacent panel (see FIG. 2).

In regard to claim 20, Simmons shows different sized material samples mounted to different panels (see FIG. 1). The Examiner takes Official Notice that larger portions of a given sample of material cost more than smaller portions thereof. Material is generally sold by geometric area, (i.e. dollars per square-foot). This is well established and common in the art of materials including carpet, wood, wallpaper, fabric, tile, etc. It follows then that the more of a material constituting a sample, the more the cost, and vice versa. Thus, the higher the price is of a material sample (shaded parallelepiped region) shown by Simmons, the larger that sample will be.

Simmons does not explicitly show each of the display panels hingedly mounted to the rack.

Cross discloses a display board comprising multiple hingedly attached panels (each panel horizontally offset from and adjacent panel) mounted thereto and pivotal between a first position supported against the outermost panels and a second position wherein substantially the entire outermost panels are visible (see FIG. 1).

Art Unit: 3692

The Simmons and Cross references are analogous art because they are from the same field of endeavor—arrayed display panels. It is unclear whether the panels of Simmons are hingedly attached, in view of the fact that it is a design patent, and not accompanied by a written disclosure. If the panels are not hingedly attached, it would have been obvious to one of ordinary skill in the art at the time of the invention to do so, for motivation disclosed by Cross. Cross recites, “Because of their pivotal mounting, a plurality of panel surfaces can partially be used at one time or the panels may be selectively thumbed through like pages in a book. (See col. 1, lines 32-35). Such a pivotal mounting of the panels shown by Simmons would be advantageous for the same reason. It follows therefore that the pivotal mounting taught by Cross, when applied to Simmons, would enable the panels to move between a first position supported against the storyboard, and a second position wherein substantially the entire storyboard is visible.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Cross, as applied to claim 16 above, and further in view of US Patent No. 556,483 to Wayne.

Simmons in view of Cross discloses all of the limitations of claim 16, but neither reference explicitly discloses underlying display panels of each of the first and second arrays as progressively wider and taller than the overlying panels.

Wayne discloses a display device comprising multiple material samples mounted to a rack, wherein underlying samples are progressively taller and wider than overlying



Art Unit: 3692

samples (see FIG. 1). Wayne discloses motivation for such a display—so that goods “may be examined as to size and quality and compared without causing any trouble or loss of time...” (see lines 69-75).

The Simmons, Cross, and Wayne references are analogous art because they are from the same field of endeavor—display fixtures. Under the interpretation of Simmons set forth in the claim 16 rejection above, it is unclear whether the underlying panels are progressively wider and taller than the overlying panels, in view of the fact that it is a design patent, and not accompanied by a written disclosure. If the underlying panels are not progressively wider and taller than the overlying panels, it would have been obvious to one of ordinary skill in the art at the time of the invention to make them so as shown by Wayne, to allow for more efficient viewing and examination of the samples, or items affixed thereto—as set forth by Wayne.

### ***Allowable Subject Matter***

Claims 3, 4, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Although previous arguments are moot in view of the new grounds of rejection, and the reopened prosecution, the Examiner would like to address certain arguments in the Appeal Brief filed December 14, 2006.

Art Unit: 3692

With respect to the Simmons reference, Applicant argues that a storyboard is not shown (Brief at page 9). The outermost panels, which are unitary with the central body portion of the rack shown by Simmons are considered to meet the broad limitation "storyboard." Absent any further limitation, a storyboard can include any board, panel, or sheet capable of supporting a story or some indicia. Were the storyboards of claims 11 and 16 further defined by the limitations of claim 9, then the storyboard would be distinguished over the Simmons reference.

Applicant further argues that Simmons does not disclose material sample mounted thereon, but rather jewelry chain. (Brief at page 7). The Examiner does not refute the fact that the Simmons reference is drawn to supporting jewelry chain, however, as explicitly set forth above, and shown by Simmons, the shaded, parallelepiped portions mounted to each of the panels comprises some sample of some material. Obviously Simmons does not explicitly state these are material samples, because Simmons is a Design Patent. However, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. *In re Mraz*, 455 F.2d 1069, 73 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put together. *Jockmus v. Leviton*, 28 F.2d 812 (2d Cir. 1928). The origin of the drawing is immaterial. For instance, drawings in a design patent can anticipate or make obvious the claimed invention as can drawings in utility patents.

Art Unit: 3692

When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. In *re Aslanian*, 590 F.2d 911, 200 USPQ 500 (CCPA 1979). See MPEP 2125. It is reasonable to interpret the shaded portions attached to the panel portions of the Simmons reference as at least inherently showing a material different than the material of which the panels are made.

The rejection of claim 1 as anticipated by Simmons has been withdrawn, because the material samples shown do not extend to the edge of the panels. Claim 13 stands rejected because the samples extend *substantially* to the edge of said panels. (Emphasis added).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

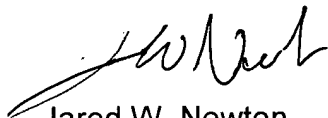
- US Patent No. 249,198 to Moon
- US Patent No. 3,185,308 to Howard

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

Art Unit: 3692

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jared W. Newton  
March 30, 2007  
JWN



RICHARD E. CHILCOT, JR.  
SUPERVISOR PATENT EXAMINER